

**PLACER COUNTY SUPERIOR COURT
CIVIL LAW AND MOTION TENTATIVE RULINGS
FRIDAY, AUGUST 21, 2020, AT 8:30 A.M.**

These are the tentative rulings for civil law and motion matters set at **8:30 a.m., Friday, August 21, 2020**. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., Thursday, August 20, 2020**. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE MICHAEL W. JONES** and if oral argument is requested, it will be heard in **Department 3**, located at **101 Maple Street, Auburn California**.

PLEASE NOTE: TELEPHONIC APPEARANCE IS REQUIRED FOR ALL CIVIL LAW AND MOTION MATTERS. (Emergency Local Rule 10.28; see also Local Rule 20.8.) More information is available at the court's website: www.placer.courts.ca.gov.

1. M-CV-0072311 Wilmington Savings Fund Society, FSB vs. Holmes, Bobby M.

Defendant Herbert Miller's ("Miller's") motion to vacate trial date is granted. The unlawful detainer trial set August 21, 2020, is vacated as this action is currently stayed due to Miller's bankruptcy filing.

The court sets an Order to Show Cause re Status of Bankruptcy on September 18, 2020, at 8:30 a.m. in Department 3.

2. M-CV-0074733 Shelly, Eric vs. Youman, Greg

Defendant Greg Youman moves for judgment on the pleadings as to plaintiff's claim for fraud – intentional or negligent misrepresentation, fraud – concealment, fraud – promise without intent to perform, and breach of contract. A motion for judgment on the pleading may be granted where the complaint does not state sufficient facts to constitute a cause of action. Code Civ. Proc. § 438(c)(1)(B)(ii). The motion has the same function as a demurrer but is brought when the time for a demurrer has expired. Code Civ. Proc. § 438(g); *S. Cal. Edison Co. v. City of Victorville* (2013) 217 Cal.App.4th 218, 227.

The motion is granted as to the three counts of fraud. Fraud claims must be alleged with specificity. Plaintiff does not allege any affirmative and false representation made by

defendant upon which plaintiff reasonably relied, which reliance was a substantial factor in causing plaintiff harm. *Perlas v. GMAC Mortgage, LLC* (2010) 187 Cal.App.4th 429, 434. For the purpose of his concealment claim, plaintiff does not allege what material facts were concealed. Nor does plaintiff allege the promise that defendant purportedly made without intent to perform. Further, plaintiff alleges no facts showing justifiable reliance and damages.

The motion is also granted as to the cause of action for breach of contract. Although plaintiff alleges that a copy of the subject agreement is attached as Exhibit A, no such document is attached to the complaint.

Plaintiff is granted leave to amend. Any amended complaint shall be filed and served on or before September 4, 2020.

3. S-CV-0040021 Yoshida, Todd K., et al vs. California Villas, et al

Geremia Pools dba Geremia Pools, Inc.'s motion for determination of good faith settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling party's proportionate share of liability for plaintiffs' injuries, and therefore is in good faith within the meaning of Code of Civil Procedure section 877.6.

4. S-CV-0040937 Chittenden, Robert N. vs. Barbara C. Pascoe

The petition to approve compromise of pending action for person with a disability is granted. The settlement agreement attached to the petition is approved. Petitioner Janet Johnson, as guardian ad litem for Barbara Pascoe, is authorized to execute the settlement agreement, and any and all documents reasonably necessary to carry out the terms of the settlement.

5. S-CV-0041355 Anchondo, Annabelle vs. Roseville JUHSD

Defendants' motion for leave to file a cross-complaint is granted. Defendants shall file and serve the cross-complaint on or before September 11, 2020.

6. S-CV-0041771 Petersen, Heather Dawn vs. Rey, David, et al

The appearances of the parties are required at 8:30 a.m. in Department 3 for the OSC hearing re status of arbitration.

7. S-CV-0042143 Am. Healthcare Administrative Svcs., Inc. vs. Aizen, Lance

Ruling on Request for Judicial Notice

Defendant's request for judicial notice is granted as to Exhibit G. Defendant's request for judicial notice is denied as to Exhibits A-F and H. Exhibits A-F are not documents

which are expressly referenced in the complaint, and are not documents upon which plaintiffs' claims rely. Instead, they are communications which relate to certain allegations, and which may provide additional or contrary factual detail or context to the allegations. The cases cited by defendant do not suggest that judicial notice is appropriate in these circumstances. As to Exhibit H, although it is referenced in the complaint, it does not form the basis for any of plaintiffs' claims, and defendant does not explain why it is necessary for the court to take judicial notice of this document.

Ruling on Demurrer to Complaint

Defendant Lance Aizen ("Aizen") demurs to each cause of action alleged in the complaint filed by American Administrative Services, Inc. and AHAS Holdings, Inc. (collectively "AHAS"). A party may demur where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The allegations in the pleadings are deemed true no matter how improbable they may seem. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.

Aizen demurs to plaintiffs' first cause of action for breach of fiduciary duty on the grounds that (1) Aizen did not owe plaintiffs a fiduciary duty when negotiating the terms of his employment contract; (2) plaintiffs waived all claims related to negotiation of employment agreements; (3) documents of which the court should take judicial notice demonstrate that Aizen's conduct was not improper; (4) fraudulent conduct has not been pled with sufficient particularity; and (5) the Agreement to Terminate Employment executed by the parties did not terminate Aizen's status as CEO.

The first cause of action alleges that Aizen breached his duty of loyalty by the following acts:

(a) directing and being the sole or primary point of contact for both his own personal counsel and legal counsel for AHAS in the Maxor Transaction, causing and overseeing the negotiation of agreements and terms in which Aizen had a direct, disproportionate financial benefit, including but not limited to a consulting agreement with Maxor and the Termination Agreement, in a clear conflict of interest with the best interests of AHAS and its stakeholders, (b) fraudulently misrepresenting factual details of his purported entitlement to compensation under the Employment Agreement and the 2017 Addendum in order to vastly overinflate his severance compensation, (c) fraudulently directing AHAS's finance department to make payments to him to which he knew he was not entitled such as the October 24, 2018 disbursement of \$500,000 and continuing payroll disbursements for purported salary as CEO after the closing of the Maxor Transaction, (d) directing AHAS to make inappropriate and unauthorized bonus payments to numerous AHAS employees, including Mr. Katz, and (e) insisting to AHAS

employees, and potentially to others outside of the company, that he was CEO of AHAS despite the fact that he knew he was no longer authorized to act as CEO.

(Complaint, ¶ 43.)

The demurrer is overruled as to the first cause of action. A general demurrer does not lie to only part of a cause of action. *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1167. Therefore, even if Aizen set forth meritorious arguments as to certain allegations, the demurrer must be overruled if any remaining allegations support the claim. In this case, although Aizen asserts that he owed plaintiffs no fiduciary duty with respect to negotiation of the Agreement to Terminate Employment, the complaint alleges numerous other actions which form the basis of the claim for breach of fiduciary duty. Aizen fails to establish waiver of the claims alleged in the complaint, which sound in fraud and embezzlement, an express carve-out of the waiver provision in the Agreement to Terminate Employment. Aizen does not demonstrate that fraud allegations in the complaint lack sufficient particularity. As noted, the court declines to take judicial notice of various communications between the parties which purportedly conflict with allegations of the complaint. Finally, the court need not determine for the purpose of the demurrer whether the Agreement to Terminate Employment permitted Aizen to continue acting as CEO of AHAS, because even if it did, remaining allegations support the claim for breach of fiduciary duty.

Aizen demurs to the second cause of action for fraudulent non-disclosure, and the third cause of action for fraud-intentional misrepresentation, on the grounds that the allegations lack sufficient particularity, and plaintiffs waived all claims related to negotiation of employment agreements. As noted above, Aizen fails to establish waiver as to these fraud claims in light of the express language of the waiver provision. Further, the court finds that the second and third causes of action are alleged with sufficient particularity. (See Complaint, ¶¶ 48-50, 53-59; see also ¶¶ 15, 17, 19, 21-22.) The demurrer is overruled as to the second and third causes of action.

Aizen demurs to the fourth cause of action for conversion on the grounds that plaintiff does not sufficiently allege that Aizen did not have a right to the \$500,000 payment alleged in the complaint, which was provided for in the Agreement to Terminate Employment. The court finds that the allegations of the complaint are sufficient to support this claim. (See Complaint, ¶¶ 62-64; see also ¶¶ 31-34.) The demurrer is overruled as to the fourth cause of action.

Aizen demurs to the fifth cause of action for declaratory relief on the grounds that the allegations do not support a judicial declaration that the Agreement to Terminate Employment is invalid, that Aizen breached any obligations owed under the agreement, and that the agreement did not terminate Aizen's status as CEO of AHAS. Aizen further argues that this claim has been waived. The court finds that the allegations of the complaint are sufficient to support this claim, and further finds that

waiver has not been established. (See Complaint, ¶¶ 67-71; see also ¶¶ 15, 17, 19, 21-22, 31-38.) The demurrer is overruled as to the fifth cause of action.

Aizen demurs to the sixth cause of action for breach of the covenant of good faith and fair dealing on the grounds that Aizen owed no duty in negotiating the terms of his employment contract, and on the grounds that this claim has been waived. Aizen fails to establish that the covenant of good faith and fair dealing does not apply to negotiations between an employer and employee related to the employee's compensation. Further, waiver has not been established. The demurrer is overruled as to the sixth cause of action.

Finally, Aizen demurs to the seventh cause of action on the grounds that injunctive relief is a remedy, as opposed to a cause of action. The demurrer is sustained as to the claim for injunctive relief. Further, as plaintiffs do not argue that this cause of action may be amended to cure the defect, the demurrer to the seventh cause of action is sustained without leave to amend.

In summary, the demurrer is sustained as to the seventh cause of action without leave to amend. The demurrer is otherwise overruled.

Aizen shall file and serve his answer to the complaint on or before September 4, 2020.

Ruling on Motion to Strike

Aizen moves to strike plaintiffs' prayer for attorneys' fees, damages and injunctive relief. Aizen also moves to strike reference to multiple improper "payments and disbursements", Aizen's Consulting Agreement with Maxor, and plaintiff's 2014 Employment Agreement.

The motion is granted as to plaintiffs' prayer for attorneys' fees. Plaintiffs fail to demonstrate that attorneys' fees are authorized by statute or contract. Plaintiffs' lone reference to a provision in the 2014 Employment Agreement for fees incurred in arbitration does not support the prayer. Further, as plaintiffs fail to demonstrate that the complaint can be amended to cure this defect, leave to amend is denied.

The motion to strike is otherwise denied, as Aizen does not establish that the remaining allegations and prayers for relief are irrelevant, false or improper. Code Civ. Proc. § 436.

Aizen shall file and serve his answer to the complaint on or before September 4, 2020.

8. S-CV-0042451 Penna, Cynthia Della vs. Peters, David

The motion for judgment on the pleadings was dropped by the moving party.

9. S-CV-0042475 Harnage, Kristen vs. Pierroz, Jeromy, et al

Petitioner and defendant Scott Andersen's petition to confirm FINRA arbitration award is granted. The arbitration award attached as Exhibit 7 to the declaration of Peter Boutin is confirmed in its entirety. Judgment shall be entered in accordance with the arbitration award.

10. S-CV-0042585 Reimer, Michael S. vs. Diamond Truss, Inc.

Defendant Diamond Truss, Inc.'s motion for leave to file cross-complaint is granted. Defendant shall file and serve the cross-complaint on or before September 11, 2020.

11. S-CV-0042913 Whitworth, Chadwick M. vs. Salazar, Johnny, et al

Motion to Compel Further Responses to Form Interrogatories

Defendant's motion to compel further responses to form interrogatories is granted. Plaintiff's responses to the discovery at issue set forth improper objections which, as noted in the court's prior ruling on defendant's motion to compel, have been waived based on plaintiff's failure to timely serve responses. Plaintiff's responses are non-responsive, and seem to refer to a different case. Plaintiff failed respond to meet and confer efforts by defendant.

Plaintiff shall serve full and complete, verified responses to Form Interrogatory Nos. 2.3-2.7, 4.1-4.2, 6.1-6.7, 7.1-7.3, 8.1-8.8, 9.1-9.2, 10.1-10.3, 11.1-11.2, 12.1, 12.4-12.7, 13.1-13.2, 14.1-14.2, 17.1 and 20.1, without objections, on or before September 11, 2020.

Defendant is awarded sanctions from plaintiff and his counsel, jointly and severally, in the amount of \$1,035, based on plaintiff's misuse of the discovery process.

Motion to Compel Further Responses to Special Interrogatories

Defendant's motion to compel further responses to special interrogatories is granted. Plaintiff's responses to the discovery at issue set forth improper objections which, as noted in the court's prior ruling on defendant's motion to compel, have been waived based on plaintiff's failure to timely serve responses. Several of plaintiff's responses are non-responsive. Plaintiff failed to respond to meet and confer efforts by defendant.

Plaintiff shall serve full and complete, verified responses to Special Interrogatory Nos. 4-21 and 34-118, without objections, on or before September 11, 2020.

Defendant is awarded sanctions from plaintiff and his counsel, jointly and severally, in the amount of \$1,035, based on plaintiff's misuse of the discovery process.

Motion to Compel Further Responses to Requests for Production of Documents

Defendant's motion to compel further responses to requests for production of documents is granted. Plaintiff's responses to the discovery at issue set forth improper objections which, as noted in the court's prior ruling on defendant's motion to compel, have been waived based on plaintiff's failure to timely serve responses. Plaintiff's responses do not otherwise comply with Code of Civil Procedure section 2031.230. Plaintiff failed to respond to meet and confer efforts by defendant.

Plaintiff shall serve full and complete, verified responses to Request for Production Nos. 1-3 and 38, without objections, on or before September 11, 2020.

Defendant is awarded sanctions from plaintiff and his counsel, jointly and severally, in the amount of \$450, based on plaintiff's misuse of the discovery responses.

12. S-CV-0043237 Calder, Robin Elizabeth vs. Jarvis, Todd

The motion for summary judgment, or in the alternative, summary adjudication, was continued to September 18, 2020, at 8:30 a.m. in Department 3.

13. S-CV-0043457 Prevost, Sarah, et al - In Re the Petition of

The petition to approve compromise of minor's claim is continued to September 4, 2020, at 8:30 a.m. in Department 3.

14. S-CV-0043581 Villa, Adriana vs. Delong, Connie Susan

The motion to compel was dropped by the moving party.

15. S-CV-0043619 Easton, Jennifer Jo vs. Rawlins, Shawn L., et al

The motion for preliminary injunction is continued to September 4, 2020, at 8:30 a.m. in Department 3.

16. S-CV-0043653 Jordan, Van vs. James, Roy, et al

Plaintiff and cross-defendant Van Jordan demurs to the first amended cross-complaint filed by Roy James and Jeannine James.

A party may demur where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The allegations in the pleadings are deemed true no matter how improbable the allegations may seem. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.

A demurrer can only be used to challenge defects that appear on the face of the pleading, or from matters that are judicially noticeable. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. No other extrinsic evidence may be considered. *Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881. In ruling on this demurrer, the court has not considered the extensive factual recitations in the moving and opposing pleadings, or any exhibits for which judicial notice has not been requested.

The demurrer is sustained with leave to amend. The first amended cross-complaint fails to state whether the alleged contract is written, oral, or implied. Code Civ. Proc. § 430.10(g); *Otworth v. S. Pac. Transp. Co.* (1985) 166 Cal.App.3d 452, 458-459. To the extent the claim is based on a written contract as stated in the opposition, the written contract must be pled either by setting out the terms verbatim in the complaint, attaching a copy to the complaint and incorporating it by reference, or by pleading the contract's legal effect. *McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1489.

Any amended cross-complaint shall be filed and served on or before September 4, 2020.

17. S-CV-0044255 Todd, Gregg John vs. City of Colfax

Defendant's request for judicial notice is granted.

Defendant City of Colfax demurs to plaintiff's first cause of action for general negligence, and four separate counts of plaintiff's second cause of action for premises liability. A party may demur where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The allegations in the pleadings are deemed true no matter how improbable they may seem. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.

Tort liability against a public entity requires an authorizing statute or enactment. Gov. Code § 815(a); *Searcy v. Hemet Unified School Dist.* (1986) 177 Cal.App.3d 792, 802. Plaintiff points to no statutory authority to assert a claim against a public entity for general negligence, or for premises liability based on general negligence or a failure to warn. Accordingly, the demurrer is sustained as to the first cause of action for general negligence, and first and second counts of the second cause of action for premises liability based on general negligence or failure to warn.

Plaintiff's opposition focuses on dangerous conditions of public property under Government Code section 835. The court finds that the complaint adequately alleges the claim for premises liability – dangerous condition of public property. Defendant fails to establish that additional factual allegations are required at this stage. The demurrer is overruled as to the third count of the second cause of action for premises liability based on dangerous condition of public property.

The demurrer is also overruled as to what defendant characterizes as Count 4, titled “Allegations about Other Defendants”. This section of the complaint sets forth agency allegations, and is not a stand-alone cause of action. Defendants may not demur to separate allegations of the complaint that do not constitute causes of action.

Based upon the foregoing, the demurrer to complaint is sustained as to the first cause of action for general negligence, and the first and second counts of the second cause of action for premises liability based on general negligence or failure to warn. The demurrer is otherwise overruled.

Plaintiff bear the burden of demonstrating how the complaint may be amended to cure the defects therein. *Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302. A demurrer shall be sustained without leave to amend absent a showing that a reasonable possibility exists that the defects can be cured by amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. Plaintiff does not describe any manner in which the identified defects could be cured. Accordingly, leave to amend is denied.

Defendant shall file and serve its answer to the complaint on or before September 4, 2020.

18. S-CV-0044409 Sinclair, Keith M., et al vs. Sinclair, Karin A., et al

The demurrer to complaint is dropped as moot as a first amended complaint was filed on August 7, 2020.

19. S-CV-0044485 Hansen, Daniel vs. R.G. Environmental Holdings, Inc.

Plaintiff’s unopposed motion for preliminary approval of class action settlement is granted.

The court has broad discretion in determining whether (1) a settlement is fair and reasonable, (2) the class notice is adequate, and (3) certification of the class is proper. *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235. “[The] preliminary determination establishes an initial presumption of fairness...” *In re General Motors Corp.* (3d Cir. 1995) 55 F.3d 768, 784. “[I]f the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that the notice be given to the class members of a formal fairness hearing...” *Schwartz v. Dallas Cowboys Football Club, Ltd.* (E.D. Pa. 2001) 157 F.Supp.2d 561, 570, n.12, quoting Manual for Complex Litigation, Second § 30.44 (1985).

When reviewing the fairness of a class action settlement, the court is to give due regard to the parties’ agreement, ensuring the agreement is not a product of fraud, overreaching

parties, or collusion and that the settlement, as a whole, is fair, reasonable, and adequate. *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145. Reasonableness of the settlement may be determined by looking to several factors such as the strength of the plaintiff's case; the risk, expense, complexity, and duration of further litigation; discovery; the experience of counsel; the presence of government participation; and the reaction of class members to the proposed settlement. *In re Cellphone Fee Termination Cases, supra*; *Dunk, supra*; *Kullar v. Foot Locker Retail, Inc., supra*.

The court has reviewed the Joint Stipulation of Settlement and Release attached as Exhibit B to the declaration of Daniel Gaines, the moving papers, and accompanying declarations and supplemental declarations filed in connection with the motion. Based upon that review, the court determines that a sufficient showing has been made that the settlement is fair, reasonable and adequate.

The court preliminarily certifies the settlement class, defined as "all current and former non-exempt California employees of defendant RG Environmental Holdings, Inc., employed between October 17, 2015, and February 29, 2020. The court preliminarily approves the proposed settlement agreement and approves the Notice of Pendency of Class Action Settlement and Final Hearing ("Notice") attached as Exhibit 1 to the Joint Stipulation of Settlement and Release. The parties are authorized to provide notice to the class members in the manner set forth in the settlement agreement.

The court preliminarily appoints Daniel F. Gaines and Alex P. Katofsky of Gaines and Gaines, APLC, as Class Counsel. Simpluris, Inc. is approved to act as the Settlement Administrator. The court also incorporates by reference all findings and orders set forth in the Amended Proposed Order.

The court sets a Final Approval Hearing on November 20, 2020, at 8:30 a.m. in Department 3, located at the Historic Courthouse in Auburn.

20. S-CV-0045189 Sanchez, Jack L., et al vs. Procopio, Vincent L., et al

Rulings on Request for Judicial Notice and Objections to Evidence

Plaintiffs' request for judicial notice is granted.

Defendants' objections to the declaration of Brian Bernard are overruled. Defendants' objections to the declaration of Jack Sanchez are sustained. Defendants' objections to the declaration of Ed Koonz, Nos. 1, 2 and 4 are sustained. Objection No. 3 is overruled.

Ruling on OSC re Preliminary Injunction

Plaintiffs seek an injunction requiring defendants Vincent Procopio and John Procopio to remove boulders and/or other obstructions which they allegedly placed in front of the access gate at 10100 Sunset Lane, and preventing defendants from blocking or in any way restricting access between the property located at 10100 Sunset Lane (“the Property”), and Sunset Lane, which is alleged to be either a public right-of-way or a prescriptive roadway easement benefitting plaintiffs.

In determining whether a preliminary injunction should issue, the court must weigh two interrelated factors, the relative hardships of the parties if the injunction is not granted, and whether the plaintiffs can establish a reasonable probability of prevailing on the merits. *Baypoint Mortgage Corp. v. Crest Premium Real Estate etc. Trust* (1985) 168 Cal.App.3d 818, 824; *Robbins v. Superior Court* (1985) 38 Cal.3d 199. “The trial court's determination must be guided by a ‘mix’ of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction.” *Butt v. State of California* (1992) 4 Cal.4th 668, 678.

Plaintiffs bear the burden of showing they would be harmed if the preliminary injunction is not granted. *Casmalia Resources, Ltd. v. County of Santa Barbara* (1987) 195 Cal.App.3d 827, 838. Plaintiffs satisfy their burden in this case. Plaintiffs submit evidence that the only vehicular access to the Property for the past 75 years has been through a gate adjacent to Sunset Lane. (Declaration of Jack L. Sanchez, ¶ 4.) On or about July 15 or 16, 2020, defendant Vincent Procopio informed plaintiffs’ tenant, Brian Barnard, that he would be placing boulders in front of the gate off of Sunset Lane on July 19, 2020. (Declaration of Brian Barnard, ¶ 4.) On July 19, 2020, Mr. Barnard awoke and discovered three large boulders blocking the access gate. (Id., ¶ 5.) As a result, Mr. Barnard was forced to dismantle the fence on a different side of the property in order to leave in his vehicle, which interferes with the use and security of the Property, as it is no longer fully fenced in. (Id., ¶¶ 6, 7.)

In opposition, defendants do not contend that they would be harmed if the injunction is granted. The balance of harm favors of plaintiffs in this instance. Further, given submitted evidence supporting the allegation that Vincent Procopio caused boulders to be placed in front of the only vehicular access gate at plaintiffs’ Property, plaintiffs demonstrate a probability of prevailing on their claim for declaratory relief.

Plaintiffs’ request for a preliminary injunction is granted as to Vincent Procopio. Plaintiffs do not demonstrate service of the OSC on defendant John Procopio. Defendant Vincent Procopio, and his agents, employees, or anyone acting in concert with him or on his behalf, are hereby enjoined from blocking, restricting or otherwise interfering with plaintiffs’ or plaintiffs’ tenants, guests or invitees’ access to and from the Property over and through Sunset Lane, pending trial in this action. In addition, defendant Vincent Procopio shall cause the boulders placed in front of the gate at the Property to be removed within five days of the hearing on this motion.

If a preliminary injunction is granted, the court must require an undertaking or cash deposit. Code Civ. Proc. § 529; Code Civ. Proc. § 995.710. Plaintiffs are ordered to post a bond in the amount of \$1,500 with the clerk of the court on or before September 4, 2020.
